IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Appeal from Order No. 157 of 2004

Date of decision: 7th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note :- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 157 of 2004

1. Naresh Lal S/o Sri Jagdish.
2. Smt. Tara Devi W/o Sri Naresh Lal.
3. Raj Kumar minor S/o Sri Naresh Lal.
4. Rajeev Kumar minor S/o Sri Naresh Lal.
   Appellants Nos. 3 & 4 are minors through their father
   Sri Naresh Lal.
   All R/o Home Science Colony, Quarter No. 607,
   Pant Nagar, District Nainital. …….. Appellants

Versus

1. Mohd. Arif S/o Sri Riyaz Ahmad.
2. Mohd. Ismail S/o Sri Abdul.
   Both R/o Village Lacchhan Nagar,
   Leharpur, District Seetapur.
3. United Insurance Company,
   through its Divisional Manager,
   Divisional Office, Tikonia,
   Haldwani, District Nainital.
4. Shamsher Singh S/o Sri Phool Singh,
   R/o Shastri Nagar, Lalkuan,
   District Nainital. ……. Respondents

Mr. Lalit Sharma, Advocate for the appellants.
None for respondents Nos. 1, 2 & 4.
Mr. D.S. Patni, Advocate for respondent No.3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Haldwani, District Nainital vide Award dated 17.02.2004 passed in Motor Accident Claim Petition No. 218 of 2002.

2. The claimants, who are unfortunate father, mother and brothers of deceased Ajeet Kumar, claimed compensation of Rs. 10,00,000/- for his death in the motor accident on 06.08.2002 when the scooter

bearing registration No. DBS 1252, on which he was travelling as a pillion rider, was dashed by the offending vehicle Truck bearing registration No. UP34-C-7302 resulting in his instantaneous death on the spot itself. On the report lodged by Shamsher Singh about the accident, a case was registered against the driver at Police Station Lalkuan. The claimants pleaded that deceased Ajeet Kumar, who was aged about 18 years on the date of the accident, used to earn Rs. 5,000/- per month as Scooter Mechanic.

3. The owners and the insurer of the offending vehicle Truck contested the claim and denied their liability to pay compensation to the claimants. The owners of the offending vehicle Truck took the plea that the accident did not occur due to the rash and negligent driving of the driver of the Truck. The insurer, on the other hand, pleaded that the Truck was being plied in breach of the policy conditions and the driver of the Truck was not holding a valid driving license. The Scooterist Shamsher Singh also filed his written statement supporting the case of the claimants and pleaded that the driver of the Truck was responsible for the accident.

4. The claimants examined PW1 Naresh Lal and PW2 Sabeer Hussain in support of their claim, whereas the insurer of the offending vehicle Truck examined DW1 Jamil Ahmad in support of its case. Scooterist Shamsher Singh examined himself as DW2.

5. The Tribunal, on the evidence led by the parties, held that deceased Ajeet Kumar died on account of the injuries sustained by him in the motor accident on 06.08.2002; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Truck; and the insurer of the Truck was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at

Rs. 20,000/- per annum on its own estimate. After deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 13,333/- per annum. By multiplying the annual dependency of Rs. 13,333/- with the multiplier of '16', the compensation was worked out to Rs. 2,13,328/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses and Rs. 2,500/- for Loss of Estate. Thus, a total sum of Rs. 2,17,828/- was awarded as compensation to the claimants for the death of Ajeet Kumar in the motor accident. The Tribunal, further, directed the insurer of the Truck to pay the compensation within a period of one month from the date of the Award and, in the event of failure, to pay interest at the rate of 9% per annum from the date of the claim petition.

7. Mr. Lalit Sharma, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 20,000/- per annum only. The learned counsel further submitted that the Tribunal has erred in not awarding any interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure to pay the amount of compensation within a period of one month from the date of the Award.

8. Mr. D.S. Patni, the learned counsel for respondent No. 3 Insurance Company, on the other hand, supported the Award and submitted that the compensation of Rs. 2,17,828/- awarded by the Tribunal for the death of a boy aged about 18 years is just and proper compensation and does not call for any enhancement in this appeal.

9. The findings recorded by the Tribunal that deceased Ajeet Kumar died on account of the injuries sustained by him in the motor accident on 06.08.2002; the accident occurred due to the rash and

negligent driving of the driver of the offending vehicle Truck; and the insurer of the Truck was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. True, the claimants pleaded that deceased Ajeet Kumar though was aged about 18 years only, used to earn Rs. 5,000/- per month as Scooter Mechanic. Though PW1 Naresh Lal has deposed in his evidence that his son Ajeet Kumar used to earn Rs. 5,000-6000 per month as Scooter Mechanic no cogent and reliable evidence was led to establish that he was running his own workshop. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal was left with no other option but to assess the income of the deceased on its own estimate. We, therefore, do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs. 20,000/- per annum. The claimants' dependency also has been rightly assessed by the Tribunal after deducting 1/3rd of the income of the deceased as his personal expenses. The multiplier of '16' selected by the Tribunal is rather on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** wherein it has been held that where the claimants are parents of the deceased, the multiplier should never exceed '10'.

11. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many

> imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often may imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

12. The compensation of Rs. 2,17,828/- awarded by the Tribunal, when examined in the context of the above-quoted dictum of the Apex Court in the case of S. Rajapriya (supra), we are satisfied, is just and proper compensation and as such, does not call for any enhancement.

13. The Tribunal has not awarded any interest on the above amount of compensation of Rs. 2,17,828/- to the claimants. By directing conditional payment of interest in the event of failure to make payment within one month from the date of the Award, the claimants have been deprived of the interest on the amount of compensation, which was otherwise payable to them. The claim petition was filed on 07.11.2002. The compensation awarded by the Tribunal has been paid by the Insurance Company on 16.03.2004. Thus, the claimants are entitled to get interest on the amount of compensation for the period between 07.11.2002 and 16.03.2004. Instead of leaving it to

the Tribunal to compute the amount of interest for the above period at the rate of 6% per annum, we, with a view to avoid any delay in that behalf, deem it proper to quantify the amount of interest payable by the Insurance Company to the claimants. Considering all the relevant factors, we quantify the amount of interest at Rs. 15,000/-.

14. For the foregoing reasons, the appeal filed by the appellants for enhancement of the compensation is allowed in part. While affirming the amount of compensation of Rs. 2,17,828/- awarded by the Tribunal, respondent No. 3 United India Insurance Company is directed to pay a sum of Rs. 15,000/- towards interest on the amount of compensation to the claimants within a period of two months from today.

15. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
07.09.2006 07.09.2006

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